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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,457	06/01/2001	David R. Miller	2174-101	3014

36412 7590 04/17/2007  
DUCKOR SPRADLING METZGER & WYNNE  
A LAW CORPORATION  
3043 4th Ave.  
SAN DIEGO, CA 92103

EXAMINER
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CORRIELUS, JEAN M

ART UNIT	PAPER NUMBER
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2162

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

09/872,457

**Applicant(s)**

MILLER ET AL.

**Examiner**

Jean M. Corrielus

**Art Unit**

2162

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-6 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 7-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This office action is in response the amendment filed on April 03, 2007, in which claims 1-13 are presented for further examination.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

### ***Remark***

3. The amendment filed on April 3, 2007 with respect to claims 1-13 has overcome the 35 USC 112 1<sup>st</sup> paragraph and the 35 USC 103 rejection set forth in the last office action and the rejection has been withdrawn. Since claims 14-16 were canceled, the 35 USC 101 with respect to claims 14-16 has been withdrawn.

### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-3 and 7-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter, specifically, as directed to an abstract idea.

Claim 1 recites "using the consumer clusters in the optimal consumer cluster set are to focus marketing on groups of consumer". Such limitation of the claimed is directed to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical

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application producing a useful result to form the basis of statutory subject matter under 35 U.S.C.

101. Applicant is advised that to distinguish the claims from the three 35 U.S.C. 101 judicial exceptions to patentable subject matter by specifically reciting in the claim the practical application. Applicant should duly note that in order for a claimed invention to be useful, it must be satisfy the utility requirement under section 101, which the claimed invention has to be specific, substantial and credible. Thus, the claims fail to produce a useful result to form the basic statutory subject matter under 101.

Claim 1 recites “using the consumer clusters in the optimal consumer cluster set are to focus marketing on groups of consumer”. Such limitation of the claim does not produce a tangible result. Applicant should duly note that the tangible requirement does not necessarily mean that a claim must either be tied to a particular machine or apparatus or must operate to change articles or materials to a different state or thing. However, the tangible requirement requires that the claim must set forth a practical application of that judicial exception to produce a real-world result. For the analysis provided above, claim 1 fails to produce a tangible and useful result to form the basis statutory subject matter under 35 USC 101.

The dependent claims 2-3 are rejected for fully incorporating the errors of their respective base claims by dependency.

Claim 7 recites “stores profile data in the form summaries of the counts; stores segment definition data including variables used to define segments”. It appears to have no post computer process activity is found in the technological arts to perform the steps of the system claimed. Such consumer classification as claimed can be done in a piece of paper, where one having

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ordinary skill in the art would compare the performance of the classification trees based on stored profile definitions data, profile data, and segment definitions data to determine the classification tree producing the optimal consumer cluster set in the sheet. Claim 6 is not **tangibly embodied** in a manner so as to *be executable* as the only hardware is in an intended use statement. Therefore, claim 1 fail to form the basis statutory subject matter under 35 USC 101.

The dependent claims 8-13 are rejected for fully incorporating the errors of their respective base claims by dependency.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

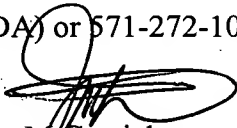
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean M. Corrielus whose telephone number is (571) 272-4032. The examiner can normally be reached on 10 hours shift.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jean M. Corrielus  
Primary Examiner  
Art Unit 2162

April 13, 2007